



International Advisory Services Group, Ltd.

November 22, 2004

Mr. James J. Jochum
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit
Room 1870
14th Street and Constitution Avenue, NW
Washington, DC 20230

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**Re: Certification of Factual information to Import Administration during Antidumping and
Countervailing Duty Proceedings**

Dear Mr. Jochum:

On behalf of the European Confederation of Iron and Steel Industries (EUROFER), I am pleased to submit the following comments in response the notice published in the Federal Register of September 22, 2004 [69 FR 56738-41]. EUROFER represents virtually all steel producers in the 25 member states of the European Union. Collectively, our members produce 184 million tonnes of crude steel (2003), approximately one-fifth of global production. A list of our national association members is attached.

Background

According to the Department's proposal, company representatives supervising the answers to the various DOC questionnaires in antidumping (AD) and countervailing duty (CVD) investigations as well as their lawyers would be made personally responsible for the "accuracy and completeness" of the information submitted, under provisions of the criminal code. Counsels could be subject to disbarment from DOC proceedings.

Further, the new certification form would list all persons "with a significant responsibility for preparation of part or all of the submission" in the company or the legal counsel's firm, and the certifying person(s) would be required to "inform the Department if he or she possesses knowledge or has reasons to know of a material misrepresentation or omission of fact in the submission" on an ongoing basis throughout the proceeding.

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Our members, who have a long standing and substantial experience with the US, the EU and other countries' antidumping and countervailing duty regimes, are deeply concerned that the proposed certification regulations may unintentionally result in a more burdensome, complex, and costly AD/CVD system in the United States. Moreover, such an outcome would open up an opportunity for worldwide procedural protectionism, prevent the timely filing of submissions in accordance with the strict statutory deadlines, and, thanks to the substantial cost increase involved, dissuade many more respondents from participating in the Department's proceedings. Such an outcome, in our opinion, would be both unnecessary and unfortunate.

The proposed regulations are not necessary

Respondents must produce voluminous amounts of data, often in micro detail and in mandatory computer formats, against short deadlines. Many individuals in each company must be involved to provide various elements of information as part of their normal work within the company. The new certification form would list all persons "with a significant responsibility for preparation of part or all of the submission" in the company or the legal counsel's firm, and the certifying person(s) would be required to "inform the Department if he or she possesses knowledge or has reasons to know of a material misrepresentation or omission of fact in the submission" on an ongoing basis throughout the proceeding." To, in effect, require each and every such person to be covered by an individual certification is unnecessary. A submission attested to by an authorized company officer or counsel is clearly a legally sufficient standard (see e.g. SEC filings). Further, since data and information in AD/CVD proceedings are constantly updated and refined, there is no need for a procedure to modify past certifications for non-operative documents.

Moreover, our experience, which we believe mirrors that of the Department, demonstrates that submissions are basically honest and verifiable, and that any errors discovered during the course of verification are typically clerical oversights resulting from time pressure and the constant modification of data.

Finally, there is already ample authority under existing laws and regulations to investigate and, where justified, apply appropriate sanctions to the parties, including their legal counsel. Also, if a company or its legal representative misrepresents the facts to the Department, adverse facts available can be used. Beyond that, there is ample discretion within which the Department can operate. There simply is no need for these new regulations. Indeed, the Department's handling of the very few cases that appear to have given rise to the proposed regulations, suggests that the problem is not so severe, nor the existing remedies so inadequate, as to justify such a sweeping new requirement. There is no need for elaborate certification requirements, and we urge the Department not to adopt them.

The proposed regulations are not fair to respondents

The European steel producers strongly disagree with the Department's statement in its 22 September 2004 notice that the proposed changes to the certification requirements "*would have little or no economic impact on the companies or their legal or other representatives.*" While it is true that adding a list of names to a form, dating and signing it would involve "*a small amount of additional supplemental information,*" the implications of the proposed changes are very serious in terms of time and expense.

While the new regulations would presumably affect petitioners both in the submission of their factual antidumping and countervailing duty petitions and any subsequent filings, foreign respondents would bear the heaviest burden.

- The proposed regulation would be very time-consuming

Under the need to provide information to the standard of “beyond reasonable doubt” as in criminal cases, those in charge of supervising answers to AD/CVD questionnaires would be required to spend an unreasonable amount of time in extensive verifications to ensure that the submissions prepared by their colleagues and by related companies are accurate and complete. As the preparation of AD/CVD submissions involves thousands of pages of data coming from many different sources, **this would seriously reduce respondents’ capacity to submit information within the mandatory deadlines**, as verification would have to be performed before filing.

Response deadlines imposed by Commerce in AD and CVD proceedings are already too short, and the new certification requirements for “accuracy and completeness” would create additional pressure on respondents, on non-substantive matters. This could require extended deadlines to accomplish all that the DOC is requesting. In case such extension of deadlines would not be granted, adverse facts available might be applied, creating trade friction between major trading nations and the United States for no reasonable reason.

- The proposed regulations would create a substantial additional financial burden

These new certification procedures would also add significantly higher costs to an already prohibitive undertaking. Greater time would need to be spent by legal counsel and company executives by both expanding their direct supervision over the generation and collection of data by any and all who have had a hand in producing it, as well as shepherding the many certifications required from inception to submission to the DOC. In particular, it is clear that lawyers would want to avoid any risk of disbarment from Department proceedings, and would be led to dedicate much more time and effort on each submission.

The huge cost of participating in AD/CVD proceedings in the US has already discouraged many respondents whose sales into the US market are not sufficiently important to justify the costs of participating. The sanction of such rational behaviour has been the application of adverse facts available, practically barring access to the US market to the imports involved. **Increasing these costs would dishearten even more respondents and act as a non-tariff barrier to trade, in particular with respect to “small entities.”**

- The proposed regulations would create serious legal uncertainty

The wording of the new regulation does not offer the legal guarantees to the signatories of the reformed certification form that would balance the possibility to be sued under criminal law, or to be disbarred. Indeed, the language used, in spite of looking reasonable (“to the best of my knowledge...after an inquiry reasonable under the circumstances”) is vague enough to be susceptible of many different legal

Mr. James J. Jochum
Page Four

interpretations. Such absence of clear standards that should be met to avoid potential sanctions introduces an unnecessary degree of uncertainty. This would be detrimental to the interests of respondents and their representatives in as much as it would force them to adopt the most costly and time-consuming approaches to make sure that they are on the safe side. Furthermore, that legal uncertainty would not be lifted without long and costly legal proceedings.

In conclusion,

EUROFER and its members, acknowledge the Department of Commerce view that it could be useful to amend the current regulations:

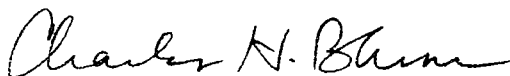
- "to include the specific date on which the submitted information is certified;"
- "to identify the specific material to which the person is certifying;"
- "to require that company officials and their legal representatives maintain a copy of their certification in their records during the pendency of the proceeding."

However, EUROFER and its members oppose the current proposal to the extent that:

- It is not necessary.
- It is characterized by a strong legal insecurity.
- Respondents would have to spend significant time in verifying their submissions, hindering their capacity to file them in due time.
- Respondents would incur significantly higher costs, due to the threat the proposed regulations present.
- Such cost increase would work as a non tariff barrier to trade.
- In the end, the proposed regulations would create unjustifiable burdens for the United States' trading partners.

We appreciate your consideration of these comments and would be happy to discuss them further with you if that would be helpful.

Yours sincerely,



Charles H. Blum
U.S. Representative of EUROFER

**NATIONAL ASSOCIATIONS MEMBERS OF
THE EUROPEAN CONFEDERATION OF
IRON AND STEEL INDUSTRIES (EUROFER)**

AUSTRIA	Fachverband der Bergwerke und Eisen erzeugenden Industrie
BELGIUM	Groupement de la Siderurgie - GSV
CZECH REPUBLIC	Hutnictvi Zeleza
FINLAND	Metallinjalostajat
FRANCE	Federation Francaise de l'Acier
GERMANY	Wirtschaftsvereinigung Stahl Edelstahl - Vereinigung
GREECE	ENXE
HUNGARY	Magyar Vas-es Acelipari Egyesules
ITALY	Federacciai
POLAND	Hutnica Izba Przemyslowo-Handlowa
SPAIN	Union de Empresas Siderurgicas – UNESID
SWEDEN	Jernkontoret
UNITED KINGDOM	UK Steel